



Comptroller General
of the United States
Washington, D.C. 20548

Spiegel

Decision

Matter of: Charl Industries Inc.--Request for
Reconsideration

File: B-236928.2

Date: February 6, 1990

Richard Coronato, President, The Charlco Group, Charl Industries Inc., for the protester.
Dan Harris, for the interested party, Quantic Industries, Inc.
Charles J. McManus, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an amendment to the solicitation should not have been issued and that discussions should have been conducted is untimely when not filed prior to the closing date for revised proposals.
2. Protest that price disclosure was improper based solely on a price reduction in the awardee's best and final offer is denied.
3. Assertion that the agency did not conduct a proper pre-award survey of the awardee is denied, since the decision to survey is within the discretion of the contracting officer.

DECISION

Charl Industries Inc. requests that we reconsider our dismissal of the protest which it filed on September 13, 1989, against the award of a contract for cable cutters, under request for proposals (RFP) No. N00104-89-R-K324, issued by the Department of the Navy. We initially dismissed Charl's protest as untimely under our Bid Protest Regulations since we found it concerned the contents of an RFP amendment and the conduct of discussions, and was not

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filed prior to the next closing date for receipt of proposals as required. 4 C.F.R. § 21.2(a)(1) (1989).

Upon reconsideration, we find that although the protest is timely, in part, it is denied.

On April 28, 1989, the Navy issued the RFP with a closing date of May 30, 1989, contemplating a fixed-price contract for 1,250 cable cutters. The agency received three proposals of which Charl's was the lowest priced at \$561,587.50 (\$437.27 per unit), and Quantic Industries, the next lowest at \$642,212.50 (\$501.77 per unit). A pre-award survey of Charl was conducted on June 6, 1989, at which time the agency was alerted to an inconsistency in the delivery schedule for first article test samples and a decision was made to amend the solicitation.

On July 7, 1989, the Navy issued an amendment which specified the first article test schedule and modified the delivery schedule to provide for incremental deliveries. The amendment notified offerors that revised proposals should be submitted by July 27, 1989. The agency received three revised proposals of which the lowest priced was Quantic at \$575,312.50 (\$448.25 per unit), and the second lowest was Charl at \$605,337.50 (\$472.27 per unit).

On August 1, 1989, the Navy requested a pre-award survey of Quantic, the new low offeror, and received a positive plant safety review on August 22, 1989. The Navy states that it evaluated the revised proposals and awarded the contract to Quantic on September 8, 1989. Charl's protest with our Office followed.

Charl protests the award on the grounds that: (1) the amendment did not state that prices could be revised or that the amendment constituted a request for best and final offers (BAFOs); (2) the amendment unfairly enabled Quantic to lower its price; (3) the Navy violated the Federal Acquisition Regulation (FAR) by failing to hold discussions with Charl; (4) the agency improperly disclosed Charl's price information; and (5) the Navy failed to conduct a proper pre-award survey on Quantic.

Contrary to Charl's contention, the amendment clearly indicated that offerors were entitled to modify their prices; it did not have to specifically state that "best and final" prices were to be submitted. See Magneco, Inc., B-235338, Sept. 1, 1989, 89-2 CPD ¶ 207. Thus, this protest contention is denied.

Charl also contends that the Navy engaged in improper auction techniques in issuing an amendment which provided Quantic with both the incentive and the opportunity to offer a reduced price. This allegation is untimely raised, since, as indicated above, the agency explicitly permitted price revisions, yet Charl protested only after it submitted a revised proposal and the contract was awarded to Quantic. See Magneco, Inc., B-235338, supra. Likewise, Charl's complaint about the Navy's failure to conduct discussions and its complaints about the issuance of the amendment are untimely, since they were not raised prior to the closing date for receipt of revised proposals. Id. Consequently, we deny reconsideration of the foregoing allegations.

- Charl also protests that, through the Navy, its initial pricing was disclosed to Quantic, thereby permitting Quantic to underbid Charl when revised proposals were submitted. Charl argues that Quantic's price reduction is particularly suspect because the acceleration of the delivery schedule, through the incremental deliveries, "could only result in a cost increase."

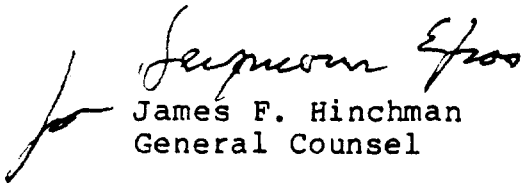
Charl's protest on this issue was timely filed on September 13, within 10 days of the September 8 contract award, from which event the protester first learned that Quantic had reduced its price, which led to this protest. See ACR Indus., Inc., B-235465, Aug. 31, 1989, 89-2 CPD ¶ 199.

Nevertheless, there is no evidence of such disclosure in the record and the Navy denies that there was any improper price disclosure. Charl's only basis for this allegation is its surprise at the unanticipated reduction in Quantic's offered price. Such speculation is insufficient to support a charge of improper price disclosure. Magneco, Inc., B-235338, supra. Indeed, we have held that a price reduction in a competitor's BAFO is an insufficient basis upon which to support a conclusion that the agency disclosed the protester's pricing information, where, as here, the record fails to show any evidence of such action. Id. The protest on the basis of this allegation is denied.

Finally, Charl complains that the Navy's determination of Quantic's responsibility was undermined by the agency's failure to conduct upon Quantic a pre-award survey comparable to the one performed on Charl. The Navy maintains that Quantic was subjected to only a plant safety review on account of its history of successfully manufacturing the solicited item. An agency is not normally required to conduct a pre-award survey of an offeror where

sufficient information already exists for making the responsibility determination. See FAR § 9.106-1 (FAC 84-47). Since a pre-award survey was not a condition for contract award, any decision with respect thereto was a matter totally within the discretion of the contracting officer. Magneco, Inc., B-235338, supra. The protest on the basis of this allegation is also denied.

Since the request for reconsideration is denied, Charl's request for reimbursement of proposal preparation expenses and attorneys' fees is denied. ADAK Communications Sys., Inc., B-222546, July 24, 1986, 86-2 CPD ¶ 103.


James F. Hinchman
General Counsel